

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
ORION HEALTHCORP, INC. <sup>1</sup>	:	Case No. 18-71748 (AST)
	:	
Debtors.	:	(Jointly Administered)
-----	:	
	:	
HOWARD M. EHRENBERG IN HIS CAPACITY AS	:	Adv. Pro. No. 20-08049 (AST)
LIQUIDATING TRUSTEE OF ORION	:	
HEALTHCORP, INC., ET AL.,	:	Trial: July 24, 2024
	:	Time: 9:30 a.m.
Plaintiff,	:	Place: Courtroom 960
	:	U.S. Bankruptcy Court
v.	:	290 Federal Plaza
	:	Islip, NY
	:	
ARVIND WALIA; NIKNIM MANAGEMENT, INC.,	:	PTC: July 17, 2024
	:	Time: 1:30 p.m.
Defendants.	:	Judge: Hon. Alan S. Trust
	:	
-----	:	

**NOTICE OF ERRATA AND LODGING OF CORRECTED EXHIBIT A TO TRIAL  
BRIEF OF PLAINTIFF, HOWARD M. EHRENBERG AS LIQUIDATING TRUSTEE OF  
ORION HEALTHCORP, INC.**

PLEASE TAKE NOTICE that, in connection with the trial in the above-captioned adversary proceeding, Plaintiff Howard M. Ehrenberg, in his capacity as Liquidating Trustee of Orion Healthcorp., Inc. ("Plaintiff") hereby files this Notice of Errata and lodges a true and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Orion Healthcorp, Inc. (7246); Constellation Healthcare Technologies, Inc. (0135); NEMS Acquisition, LLC (7378); Northeast Medical Solutions, LLC (2703); NEMS West Virginia, LLC (unknown); Physicians Practice Plus Holdings, LLC (6100); Physicians Practice Plus, LLC (4122); Medical Billing Services, Inc. (2971); Rand Medical Billing, Inc. (7887); RMI Physician Services Corporation (7239); Western Skies Practice Management, Inc. (1904); Integrated Physician Solutions, Inc. (0543); NYNM Acquisition, LLC (unknown) Northstar FHA, LLC (unknown); Northstar First Health, LLC (unknown); Vachette Business Services, Ltd. (4672); Phoenix Health, LLC (0856); MDRX Medical Billing, LLC (5410); VEGA Medical Professionals, LLC (1055); Allegiance Consulting Associates, LLC (7291); Allegiance Billing & Consulting, LLC (7141); New York Network Management, LLC (7168). The corporate headquarters and the mailing address for the Debtors listed above is 1715 Route 35 North, Suite 303, Middletown, NJ 07748.

complete copy of the Ruling Conference transcript for the hearing dated April 10, 2024, in the above referenced adversary which includes adversary no. 20-08052(AST) (as the matters were called together on calendar).

Dated: August 8, 2024

Respectfully submitted,  
PACHULSKI STANG ZIEHL & JONES LLP

/s/ Jeffrey P. Nolan

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*Counsel for Plaintiff, the Liquidating Trustee*

# **EXHIBIT A**

1 UNITED STATES BANKRUPTCY COURT  
2 EASTERN DISTRICT OF NEW YORK  
3 Case No. 18-71748-ast  
4 - - - - - x  
5 In the Matter of:  
6 ORION HEALTHCORP, INC., et al.,  
7 Debtor.  
8 - - - - - x  
9 Adv. Case No. 20-08049-ast  
10 - - - - - x  
11 HOWARD M. EHRENBURG, in his capacity as liquidating trustee  
12 of Orion HealthCorp, Inc., et al.,  
13 Plaintiffs,  
14 v.  
15 ARVIND WALIA; NIKNIM MANAGEMENT, INC.,  
16 Defendants.  
17 - - - - - x  
18 Adv. Case No. 8-20-08052-ast  
19 - - - - - x  
20 HOWARD M. EHRENBURG in his capacity as LIQUIDATING TRUSTEE  
21 OF ORION HEALTHCORP, INC., et al.,  
22 Plaintiffs,  
23 v.  
24 ABRUZZI INVESTMENTS, LLC,  
25 Defendants.

1     - - - - - x  
2                   United States Bankruptcy Court  
3                   290 Federal Plaza  
4                   Central Islip, New York 11722  
5  
6                   April 10, 2024  
7                   11:29 AM  
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21     B E F O R E :  
22     HON ALAN S. TRUST  
23     U.S. BANKRUPTCY JUDGE  
24  
25     ECRO:   UNKNOWN

1 HEARING re Recovery Of Certain Transfers

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3 HEARING re Summary Judgment

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25 Transcribed by: Rita Weltsch

1 A P P E A R A N C E S :

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8 BY: JEFFREY P. NOLAN

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5  
6 BY: ANTHONY F. GIULIANO

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1 P R O C E E D I N G S

2 MR. ROSEN: Good morning, Judge.

3 THE COURT: Good morning.

4 MR. ROSEN: You're muted, Judge.

5 THE COURT: That will make for a short ruling  
6 conference.

7 MR. ROSEN: Sorry. That's better. We can hear  
8 you now.

9 THE COURT: I've been ruling for the last hour-  
10 and-a-half. You guys didn't hear it?

11 MR. ROSEN: I'm so sorry. Can you do it again?

12 THE COURT: Sorry, my throat is sore now.

13 CLERK: Good morning. I am Alexis -- excuse me.

14 THE COURT: It's contagious.

15 CLERK: Good morning. I am Alexis Hennigan,  
16 backup courtroom deputy for Chief Judge Alan S. Trust  
17 presiding. These hearings are being recorded. Please speak  
18 clearly. Once you hear your case called, please give your  
19 appearance. And remember, before speaking please state your  
20 name so we can get a clear record of who is appearing. All  
21 parties not speaking, please put your phone on mute.

22 Case Number 20-08049, Howard M. Ehrenberg v.  
23 Arvind Walia, et al, and Case Number 20-08052, Howard M.  
24 Ehrenberg v. Abruzzi Investments LLC, et al.

25 THE COURT: Let's take appearances please. First

1 in Walia.

2 MR. ROSEN: Good morning, Judge. Sanford Rosen,  
3 Rosen & Associates. And we are counsel for the Defendants.

4 MR. SCHEIMAN: Good morning, Your Honor. Eugene  
5 Sheiman with the Law Firm of Eugene Scheiman, co-counsel for  
6 the Defendants.

7 MR. NOLAN: Good morning, Your Honor. Jeff Nolan  
8 appearing on behalf of the Plaintiffs, Howard Ehrenberg, the  
9 Trustee of the Orion Liquidating Trust.

10 MR. EHRENBURG: Good morning, Your Honor. I'm  
11 Howard Ehrenberg, the liquidating trustee.

12 THE COURT: All right. Do we have counsel in  
13 Abruzzi also?

14 MR. GIULIANO: Yes, Your Honor. Good morning.  
15 Good morning, Your Honor. Anthony Giuliano for the  
16 defendants in the Abruzzi matter.

17 THE COURT: All right. And Mr. Nolan, you're  
18 still representing Mr. Ehrenberg in Abruzzi?

19 MR. NOLAN: Yes, Your Honor. Jeff Nolan appearing  
20 on behalf of the plaintiff in the 08052 Abruzzi adversary on  
21 behalf of the plaintiff.

22 THE COURT: All right. I'm going to start with  
23 the ruling conference in 20-08052, Ehrenberg v. Abruzzi  
24 Investments and John Petrozza.

25 This is the Court's ruling made in narrative form

1 under Rule 7052 and will include the Court's findings of  
2 undisputed facts and conclusions of law. This is a core  
3 proceeding under Title 28, Section 157(b)(2)(H). The venue  
4 is proper in this court. Due and proper notice of the  
5 various motions have been provided to the parties. The  
6 Court has before it Plaintiff-Trustee's motion for summary  
7 judgment, the Defendant's cross-motion for summary judgment,  
8 and motion to strike, which raises various evidentiary  
9 issues.

10 The Court has determined that the following facts  
11 are not subject to a genuine dispute and are therefore  
12 established in this case pursuant to Rule 56(g) of the  
13 Federal Rules of Civil Procedure as incorporated by Rule  
14 7056. The Court will also address the myriad evidentiary  
15 objections raised by the Defendants to the extent that they  
16 relate to the determination that this Court has made as to  
17 what facts are not in genuine dispute.

18 This adversary proceeding revolves around one  
19 payment, a \$250,000 transfer made to one or more of the  
20 defendants. That transfer came prepetition from funds that  
21 belonged to one or more of the debtors. Those funds of  
22 \$250,000 were ultimately repaid, but repaid to a non-debtor  
23 entity. However, for purposes of this summary judgment  
24 motion, the only issue before the Court is the transfer that  
25 was made of the \$250,000.

1           The Court has determined for the reasons that  
2 follow to deny both parties' cross-motions for summary  
3 judgment and will issue a trial scheduling order on the  
4 pending claims.

5           The Debtors are the various multiple entities that  
6 are listed in the adversary proceeding. I won't recite all  
7 18 or so of them in the record, but they are apparent on the  
8 face of the adversary.

9           Those entities prepetition operated a consolidated  
10 enterprise of companies which were aggregated through a  
11 series of acquisitions and operated in the healthcare sector  
12 space, primarily in revenue and practice management.

13           At all times relevant, John Petrozza, who I will  
14 refer to as Petrozza, has been a resident of the State of  
15 Florida who did business in New York. His entity, Abruzzi  
16 Investments, is a Limited Liability Company that had no  
17 employees, no officers, and no directors but was managed by  
18 Mr. Petrozza. I'll refer to them collectively as  
19 Defendants. The only activity undertaken by Abruzzi was to  
20 invest money on Mr. Petrozza's behalf.

21           Between 2015 and 2016, Mr. Petrozza considered  
22 Paul Parmar, who was the primary principal of the Debtors,  
23 as a close friend. Mr. Parmar was at all relevant times the  
24 primary operating person, officer, and controlling  
25 shareholder behind the Debtors.

1           In June of 2013, Mr. Petrozza commenced his  
2       business relationship with the Debtors when he was  
3       approached by Mr. Parmar and asked to invest \$4 million in  
4       Constellation Healthcare Investment, which I'll refer to as  
5       CHI, which is a non-debtor entity. CHI allegedly held an  
6       ownership interest in the Debtor entity, Orion HealthCorp  
7       Inc., which I will refer to as Orion. According to the  
8       Defendants, their purpose in investing \$4 million in CHI was  
9       to acquire 100 percent ownership interest in Orion. Mr.  
10      Petrozza subsequently made the \$4 million investment in what  
11      he believed was CHI. Additionally, he paid approximately  
12      \$300,000 to Orion to cover IPO and expenses associated with  
13      his investment. The money paid by Mr. Petrozza was sent to  
14      Parmar and subsequently deposited into an IOLTA account held  
15      at Robinson Brog Leinwald Greene Genovese & Gluck, referred  
16      to as Robinson Brog, in the name of the non-debtor entity,  
17      Constellation Health LLC.

18           In December of 2015, the United States District  
19      Court for the Southern District of Texas entered a judgment  
20      against Orion in the amount of \$194,185. That Southern  
21      District of Texas judgement ultimately resulted in a proof  
22      of claim being filed in the bankruptcy case and assigned as  
23      Claim Number 1000. That judgment remained outstanding at  
24      the time the Debtors filed for bankruptcy relief.

25           On March 9th of 2016, a lawsuit was filed against

1 the debtor entities Physician Practice Plus and CHT by a  
2 plaintiff called Criteria LLC. On November 30th of 2017,  
3 an adverse judgement was entered against those debtors,  
4 Physician Practice and CHT, for some \$77,000. That  
5 judgement also remained outstanding at the petition date.

6 In November of 2016 as part of a large-scale  
7 private transaction involving taking CHT private, Mr.  
8 Petrozza met with Mr. Parmar and the board of directors who  
9 approved to go-private transaction so they could all make "a  
10 gazillion dollars". Petrozza asserted he was an investor in  
11 one or more of the debtors at the time of the go-private  
12 transaction and wanted to receive a multiple on his \$4  
13 million investment.

14 Along the way, several fictitious entities have  
15 been created to represent ownership of the equity of CHT.  
16 One of those entities was Lexington Landmark Services, Inc.,  
17 which as far as Mr. Parmar knew, did not exist as a  
18 legitimate business. While his name was signed on certain  
19 documents, he claimed his signature was forged and that he  
20 never gave Robinson Brog authority to receive monies on  
21 behalf of Landmark Services.

22 Mr. Petrozza testified that on May 24th of 2017,  
23 he asked Mr. Parmar for a personal loan of \$200,000. He  
24 testified that he wanted the money in order to acquire a  
25 lease to a certain property in Florida. The Court has not

1       been provided with any specifics concerning what property or  
2       what lease.

3               In any event, on that same day, on May 24th, 2017,  
4       Mr. Parmar directed partner Mitchell Greene at Robinson Brog  
5       to wire \$250,000 from the Debtor's IOLTA account to Mr.  
6       Abruzzi. Later that same day at 8:39 p.m., Parmar emailed  
7       Mr. Greene to wire the \$250,000 and he did not care which  
8       account the funds were taken out of.

9               The next day, May 25, Robinson Brog confirmed to  
10       Mr. Parmar that the \$250,000 wire was in fact sent from the  
11       Debtor's IOLTA account to Abruzzi. The funds were sent from  
12       an account held in the name of Constellation Health/CHT  
13       Closing. That transaction is what the pleadings refer to  
14       and what the Court will refer to as the Transfer.

15              The Debtor's books and records evidence no  
16       antecedent debt owed to the Defendants at any time during  
17       the calendar year 2017. Mr. Petrozza could not explain why  
18       he asked for \$200,000 but received \$250,000.

19              Mr. Petrozza further testified that shortly after  
20       receiving the wire, the deal for the property that he was  
21       working on in Florida fell through and he no longer needed  
22       the money. He then advised his assistant, Lisa Basich, to  
23       return the money to Mr. Parmar. Mr. Parmar then provided  
24       wiring instructions to Ms. Basich, who then directed that  
25       the funds be wired back as directed by Mr. Parmar.

1           On June 28th of 2017, \$250,000 was liquidated from  
2           an investment account of Abruzzi and forwarded to Mr.  
3           Petrozza's checking account. The next day, Mr. Abruzzi  
4           wired \$250,000 to an entity called Sunshine Star LLC.  
5           Sunshine Star was a newly-created entity, not a debtor  
6           entity, but was created by or for the benefit of Mr. Parmar  
7           and his at that time girlfriend, Elena Sartison. The  
8           Debtor's books and records reflect no antecedent debt owed  
9           to Sunshine Star during 2017.

10           In October of 2017, Sunshine Star closed the bank  
11           account into which the \$250,000 had been wired. Defendants  
12           admit that the transfer to Sunshine did not benefit any of  
13           the Debtors and that the Defendants had provided no services  
14           for the debtors.

15           The multiple entities which ended up filing for  
16           bankruptcy on March 16, 2018 include the entities the Court  
17           has described thus far. The Debtor's cases had been jointly  
18           administered.

19           In July of 2018, Defendant Abruzzi Investment,  
20           filed Claim Number 10062, identifying itself as a  
21           shareholder of CHT. That day Defendant also filed Claim  
22           10063, asserting it held a 49 percent member interest in  
23           CHT.

24           This adversary proceeding was commenced in March  
25           of 2020. The only transaction at issue for summary judgment

1 purposes, as I said, is the \$250,000 wire transfer sent to  
2 Abruzzi on May 25, 2017. That transfer was from the funds  
3 that belonged to one or more of the Debtors.

4 The parties have filed various pleadings  
5 throughout this case, including an answer and counterclaim,  
6 a plaintiff's motion for summary judgment, defendant's  
7 cross-motion for summary judgment, and motions to strike  
8 various of the evidentiary affidavits submitted by the  
9 trustee. The various motions have been on submission with  
10 the Court since May of 2022.

11 I will let the parties know it is not this Court's  
12 practice to hold matters on submission for nearly that  
13 length of time. So the Court's apologies to the parties for  
14 the length of time it's taken to get to today's rulings.

15 Standards for summary judgment are well known by  
16 the parties. The Court won't recite them. The central  
17 issue is whether or not there exists genuine issues of  
18 material fact -- whether or not there are genuine issues of  
19 material fact that are in dispute such that judgment as a  
20 matter of law can or cannot be awarded to either party.

21 Where cross-motions for summary judgment are  
22 pending, the Court must make an independent valuation of  
23 each motion separately.

24 Even though the Court is denying both summary  
25 judgment motions because the matter will ultimately be

1        tried, I'm going to go ahead and give you my evidentiary  
2        rulings on the affidavits that were presented to the Court  
3        because the Court anticipates those affidavits will appear  
4        again at the time of trial and there is no reason to redo  
5        these objections.

6                With respect to the affidavit of Edith Wong and  
7        the declaration of Frank Lazzara, Defendants have objected  
8        under Rule 901 of the Federal Rules of Evidence, which is an  
9        authentication requirement. The caselaw that addresses Rule  
10       901 is fairly replete that the burden of authentication is  
11       not particularly high. The Defendant objects to the Wong  
12       affidavit and Lazzar declarations, including emails and  
13       other business records that are identified in those  
14       declarations because Ms. Wong and Mr. Lazzar did not  
15       constitute witnesses with knowledge of the items that are  
16       par of what they are claimed to be.

17               However, in a related adversary proceeding arising  
18       out of the same Orion case, the same evidentiary objections  
19       were raised by the same counsel as here. Anecdotally, the  
20       district court in that action determined that personal  
21       knowledge is not a requirement for the authentication of  
22       written documents in the Second Circuit. See Aquila Alpha  
23       v. Ehrenberg, 2023 WL 2164268 \*4 (E.D.N.Y. Feb. 22, 2023),  
24       affirmed by the Second Circuit, 95 F.4th 98.

25               The evidentiary objections to the Wong affidavit

1 and Lazzar affidavit for 901 purposes are overruled.  
2 There's an adequate basis for the Court to accept those  
3 documents as part of the summary judgment record, which  
4 means that they can then become part of the trial record.

5 As to Ms. Sartison, the Debtor also -- the  
6 Defendants also objected to her declaration which contained  
7 the opening and closing bank statement of M&T for Sunshine  
8 Star, again, based on authentication. Again, there is an  
9 adequate basis that's set out in the Sartison affidavit to  
10 authenticate those documents, including the Ms. Sartison's  
11 declaration that "At the request and direction of Mr.  
12 Parmar, I opened an account at M&T Bank for Sunshine Star  
13 LLC."

14 As the creator of the bank account for Sunshine,  
15 there is clearly enough circumstantial evidence to  
16 authenticate the opening and closing statements of that very  
17 same bank account. Refer you all back again to Aquila  
18 Alpha. Both the District Court's opinion and the Second  
19 Circuits affirmed this.

20 The Defendants also object to the Wong and Lazzar  
21 declarations as inadmissible expert testimony. However,  
22 there is no specific statement contained in either  
23 declaration which should be stricken because it is providing  
24 an opinion. Both of those declarations were offering fact  
25 testimony and aren't proffered as expert testimony, so 703

1 is irrelevant.

2 As far as the Defendant's hearsay objection, that  
3 too is overruled obviously under the well-known hearsay  
4 exception for business records under 803(6). The records  
5 attached are business records and the objection is  
6 overruled. Hearsay objections and business records  
7 exceptions have been routinely construed in favor of  
8 admissibility due to the general trustworthiness of  
9 regularly-kept records and the need for this type of  
10 evidence in many cases, particularly cases which an  
11 independent trustee is appointed to oversee the  
12 administration of a case and/or litigation arising  
13 therefrom. I'll refer the party to Arista Records v. Lime  
14 Group, 784 F.Supp.2d 398, 421 and Chevron Corp. v. Donziger,  
15 974 F.Supp.2d 362, 691-692.

16 With respect to the question of whether or not the  
17 \$250,000 was property of the estate, the Court has  
18 determined that as a matter of law, the funds transferred  
19 were property of the bankruptcy estate -- would have been  
20 property of the bankruptcy estate had the bankruptcy estate  
21 had the bankruptcy case existed at the time that the  
22 transfer occurred. The record is undisputed that the  
23 Debtors utilized the IOLTA account at Robinson Brog to hold  
24 large amounts of funds and for multiple transactions. Just  
25 because the fund were held in an IOLTA account does not make

1       them not funds of the Debtors. New York Fiduciary Law  
2       Section 4971 is clear that monies that are held by an  
3       attorney or held in a fiduciary capacity from a client for a  
4       client and/or for a designated beneficial owner. The  
5       Debtors had control and custody over the funds while they  
6       sat in the Robinson Brog account and had the power to direct  
7       their disposition.

8               The Court finds no genuine dispute as to whether  
9       or not the funds transferred to the Defendants are  
10      recoverable as property of the estate.

11             In terms then of the substantive legal theory,  
12      trustee moves forward first on Bankruptcy Code Section  
13      548(a)(a), which allows the recovery of any property that  
14      was transferred with actual intent to hinder, delay, or  
15      defraud any entity to which the Debtor was or became liable,  
16      as well as New York DCL Section 276, which provides that  
17      every conveyance made and every obligation incurred with  
18      actual intent to hinder, delay, or defraud present or future  
19      creditors is fraudulent. The two statutes are adequately  
20      identical for the Court to conduct one analysis of both.  
21      See Janitorial Close-out City Corp., 2013 WL 492375 \*5  
22      (Bankr. E.D.N.Y. 2013).

23             Transfer may be avoided either under 548(a) of the  
24      Bankruptcy Code or New York DCL 276. If the Debtor had an  
25      interest in the property transferred, which is undisputed

1 here -- as to which there is no genuine dispute here. The  
2 transfer occurred within two years of the petition date.  
3 That is undisputed here. And the transfer was made with  
4 actual intent to hinder, delay, or defraud a creditor.  
5 That's where the factual dispute arises.

6 The trustee has the burden of establishing the  
7 actual intent of the transfer or debtor by clear and  
8 convincing evidence. See *In re Jacobs*, 394 B.R. 646, 658  
9 (Bankr. E.D.N.Y. 2008).

10 Because it is difficult to find direct evidence of  
11 actual fraudulent intent, courts in this circuit look to  
12 certain badges of fraud which can constitute circumstantial  
13 evidence of fraudulent intent. See *In re Kaiser*, 722 F.2d  
14 1574, 1582-1583 (2d. Cir. 1983). The parties generally  
15 agree on what those badges of fraud can include. Lack of  
16 consideration, close association between the parties, the  
17 financial condition of the transferor, chronology of events  
18 and transactions under inquiry.

19 The Court has determined that a genuine issue of  
20 fact disputes as to whether or not there was adequate  
21 consideration for the transfer of the \$250,000. In the  
22 shortest way to state it, Plaintiff asserts that it was  
23 simply a transfer for no consideration. The Defendant  
24 asserted it was a loan, and a loan supported by a promise to  
25 repay.

1           The Defendants rely on certain text messages to or  
2           from Mr. Petrozza where he requests the \$200,000 in exchange  
3           for a promise to repay it. The record is clear though that  
4           there is no signed promissory note. There doesn't appear to  
5           be any interest charged for the loan or any collateral  
6           provided.

7           Based upon the entire record before the Court,  
8           there is a genuine dispute of material fact as to whether or  
9           not there was consideration for the transfer at the time the  
10          transfer was made and whether or not that consideration is  
11          adequate.

12          On the close relationship, there is a close  
13          relationship in this record between Petrozza and Mr. Parmar  
14          for the reasons that I've already outlined. There doesn't  
15          appear to be any retention of possession or benefit of the  
16          property by the Debtor once transferred. Funds went to  
17          Petrozza. Petrozza then paid the funds back in the  
18          equivalent amount that he received, although he didn't pay  
19          it into the right entity.

20          As far as the financial condition of the Debtor  
21          before or at the time of the transfer, the undisputed  
22          evidence before the Court based upon an expert opinion from  
23          B. Reily is that the Debtors were insolvent on the measuring  
24          date, the probative date, the date of the transfer. So  
25          insolvency condition here exists.

1           In addition, the record is clear that there was  
2           the Southern District of Texas judgement outstanding at the  
3           time -- prior to the time that the transfer was made and the  
4           FBI had seized over \$20 million from the IOLTA account prior  
5           to the time of the transfer.

6           Questions certainly do exist concerning the  
7           overall chronology of events and whether or not the  
8           transaction should have been considered legitimate at the  
9           time that it was made, but that is a fact issue for the  
10          court to determine after trial.

11          With respect to the Trustee's cause of action for  
12          a constructively fraudulent transfer and New York DCL 273-a,  
13          New York law is clear that any conveyance made without fair  
14          consideration when debtor is a defendant in action for money  
15          judgement and a judgement has been docketed against him can  
16          be set aside as a constructively fraudulent transfer. To  
17          prevail, the Plaintiff must establish that the conveyance  
18          was made without fair consideration and for the same reasons  
19          that I discussed in connection with the actual fraudulent  
20          transfer claim. The Court has found a question of fact as  
21          to whether or not there was fair consideration for the  
22          transfer at the time it was made. The other elements under  
23          273-a have been satisfied as a matter of law by the trustee.

24          Again, as I've noted, the expert insolvency report  
25          of Craig Jacobson from B. Reily is unrebutted in the summary

1 judgement record. So Orion was insolvent on May 25, 2017.

2 The fair consideration under Section 272 of DCL,  
3 the Court has also found a question of fact as to whether or  
4 not the consideration -- whether consideration was provided  
5 and whether that consideration was fair for 272 purposes.  
6 The Court has also found a question of fact as to whether or  
7 not the defendants were operating in good faith at the time  
8 that the transfer was made. See Sardis v. Frankel, 113  
9 A.D.3d 135, 141-142.

10 So for all of those reasons, both motions for  
11 summary judgement have been denied. And again, the motion  
12 to strike as to the evidence, the Court has already ruled on  
13 that.

14 The Court has also noted in the pleadings that the  
15 parties have a serious disagreement about the impact of  
16 Section 550 of the Bankruptcy Code. 550 is only triggered  
17 once a transfer has been avoided. I won't spend any time  
18 talking about 550 because to this point no transfer has been  
19 avoided so there is no reason to talk about who might  
20 ultimately have liability for the transfer if it were set  
21 aside.

22 I'm going to set a trial on the claim in the  
23 adversary proceeding. As I said, for Rule 56(g) purposes,  
24 the facts that I've identified as undisputed are undisputed  
25 for trial purposes. The trial will be limited to the

1 matters on which the Court stated there to be genuine issues  
2 of material fact. The Court's intention is to set the  
3 matter for trial on July 24th of this year so that the  
4 matter can be tried this summer. The Court will issue a  
5 trial scheduling order consistent therewith.

6 Mr. Nolan, I'm going to ask you and Mr. Giuliano  
7 to work on a short form of order denying both summary  
8 judgment motions. You don't need to repeat all of the  
9 evidentiary rulings that I've made on the record, but they  
10 will -- as I said, those evidentiary rulings will stand  
11 should the same declarations and affidavits be submitted at  
12 the time of trial, which I suspect they might well be.

13 All right?

14 MR. NOLAN: Yes, Your Honor. Thank you.

15 MR. GIULIANO: Thank you, Your Honor.

16 THE COURT: Thank you both.

17 THE COURT: All right. I'm going to turn now back  
18 to 20-08049, Trustee v. Walia. This too is an adversary  
19 proceeding seeking recovery of certain transfers. The  
20 causes of action set out in the adversary proceeding are  
21 core proceedings, which this Court may hear and determine  
22 under Title 28, Section 157(b)(2) and the orders of  
23 reference in effect in the Eastern District of New York and  
24 is proper before this Court.

25 As with the prior adversary proceeding, these

1 matters have been pending for some time. And again, it's  
2 not the Court's practice to let matters fester for this  
3 long. Apologies to the parties for the length of time it's  
4 taken to get to today's ruling.

5 This too is a ruling in narrative form. And under  
6 Bankruptcy Rule 7052, it includes the Court's findings of  
7 undisputed facts as well as conclusions of law in accordance  
8 with 2056(g) of the Federal Rules of Civil Procedures  
9 incorporated by Bankruptcy Rule 7056, the facts that are  
10 stated by this Court to be undisputed are undisputed for  
11 purposes of the ultimate trial.

12 This case involves two transfers sought to be  
13 recovered by the trustee through summary judgement. And  
14 there's also a partial summary judgement motion by the  
15 Defendants. I'll address these together.

16 First, the trustee seeks recovery of a \$2.5  
17 million wire transfer made on April 15 of 2016 from an M&T  
18 bank account of the Debtors, the Debtor, CHT, that was made  
19 to a JP Morgan Chase account, Chase bank account of the  
20 defendant, Niknim. A transfer was made at the direction of  
21 Mr. Walia and was made in connection with -- arguably made  
22 in connection with an asset purchase transaction, which I'll  
23 describe in more detail and defined as the Porteck  
24 transaction.

25 The second claim is to recover a \$1,520,000 wire

1 transfer made in June of 2017 from the Debtor's Robinson  
2 Brog IOLTA account, law firm IOLTA account. That transfer  
3 was sent to a JP Morgan Chase bank account of Niknim. I'll  
4 refer to that as the second transfer and the \$2.5 million  
5 wire as the first transfer. The parties have provided an  
6 extensive set of -- extensive joint set of undisputed facts.  
7 The parties then separately provided their own proposed  
8 undisputed facts.

9 Trustee claims that both the first transfer and  
10 the second transfer either intentional fraudulent transfers  
11 and/or constructive fraudulent transfers. The defendants in  
12 their partial summary judgement motion essentially seek  
13 dismissal of the trustee's claims on a standing theory that  
14 the trustee lacks standing to use Section 544 of the  
15 Bankruptcy Code to invoke the remedies of state law  
16 creditors in the New York DCL.

17 For the reasons to follow, the Court is denying  
18 the trustee's request for summary judgment on the first  
19 transfer, being the \$2.5 million wire transfer made in April  
20 of 2016, is granting summary judgment to the trustee on the  
21 second transfer claim, the \$1,520,000 transfer made to  
22 Niknim in June of 2017. All other relief sought by the  
23 Trustee is denied and the Defendant's motion for partial  
24 summary judgement is also denied.

25 I am going to direct the parties to return to

1 mediation and I'm going to set a trial date in June of 2024.  
2 But I didn't want to jump past that part before I go through  
3 the elaborate ruling. But this case will also be set for  
4 trial on the remaining claims on July 24th, but I am  
5 directing the parties to return to mediation.

6 At all relevant times, the Debtors were a  
7 consolidated enterprise of several companies aggregated  
8 through a series of acquisitions and operating in the  
9 healthcare space, primarily in revenue and practice  
10 management services for physician practices. The debtors  
11 are as stated in the pleadings. I won't read all of their  
12 names back into the record, but they do include the entity  
13 Constellation Healthcare Technologies, which is a debtor  
14 that I'll refer to as CHT. CHT maintained a checking  
15 account at all relevant times at M&T Bank.

16 In 2015, Mr. Paul Parmar was the chief executive  
17 officer of CHT and was looking to acquire a medical billing  
18 company. He became interested in purchasing Porteck  
19 Corporation, which I will refer as Porteck. See joint  
20 statement Paragraph 26. At that time, Porteck was a  
21 technology services company in the healthcare space owned,  
22 controlled, and operated by Defendant, Arvind Walia. Mr.  
23 Walia was its CFO.

24 At that time, Porteck had two business lines, AHMS  
25 and PC Advantage, which I will refer to as PCA, which both

1 provided medical billing services.

2 Niknim Management Inc, which I call Niknim, is a  
3 New York corporation registered and operating from Mr.  
4 Walia's residence on 27 Kettlepond Road in Jericho, New  
5 York. Mr. Walia was the sole officer, employee, and  
6 shareholder of Niknim. Mr. Walia formed Niknim to manage  
7 his consulting work, take care of his personal investments,  
8 and family trust. Niknim followed no corporate formalities  
9 and maintained no resolutions of shareholders or minutes.

10 In March of 2015, the debtor entity Physician  
11 Practices Plus acquired the assets of Porteck pursuant to an  
12 asset purchase agreement executed that same month. I'll  
13 call that the Porteck APA. The sellers were Porteck, Walia,  
14 the Walia Trust, and the Janaminder Trust. Mr. Walia  
15 executed the APA on behalf of himself and the Janaminder  
16 Trust and Porteck. The Walia Truste never signed the APA.

17 Mr. Parmar executed the APA on behalf of the  
18 debtor, Physicians Practice. The APA provides for a  
19 purchase price of \$12.8 million even though Mr. Walia had  
20 agreed in writing to sell the Porteck assets for \$10.8  
21 million. The purchase price was juiced up -- my phrase, not  
22 the parties. The purchase price was juiced up because Mr.  
23 Parmar told Mr. Walia that he needed to add \$2 million as  
24 "deal fees". Joint Fact 35.

25 Mr. Walia was unconcerned about the deal price

1 being juiced up, Joint Fact 37.

2 In fact, Mr. Walia testified in his deposition  
3 that he really paid no attention to what Mr. Parmar was  
4 doing when the APA purchase price was set at \$2 million more  
5 than the parties had agreed. When asked when you were  
6 negotiating with Mr. Parmar or Orion, "Was the purchase  
7 price supposed to be \$10.8 million?"

8 Answer, "Correct."

9 Question, "When did it change to \$12.8 million?"

10 Answer, "At some point Mr. Parmar stated there are  
11 fees to close this deal that have to be included in the  
12 purchase price. I said as long as my share of the purchase  
13 price doesn't change, it doesn't concern me." That's Page  
14 134 of Mr. Walia's deposition.

15 The evidence in the record is that the actual deal  
16 fees, the fees paid to the abstract business advisor's  
17 broker, was \$192,000. So one-tenth or so of the nearly \$2  
18 million by which the purchase price was juiced up.

19 In terms of the value of the assets acquired by  
20 the debtor entity, the net asset value of the AHMS business  
21 was \$1.35 million. The assets were valued at \$2.35 million,  
22 but there was still an outstanding \$1 million note. The  
23 value of the PCA side was \$2,546,000, but there was still an  
24 almost half-million note outstanding, an almost \$1.9 million  
25 loan outstanding. So the actual value of the assets as

1 acquired from Porteck at the time that they were acquired  
2 was \$1.824 million being the net asset value of AHMS and the  
3 net asset value of PCA.

4 Despite the written record of the asset valuation,  
5 Mr. Parmar and Mr. Walia agreed to the value of the assets  
6 being \$10.8 million and apparently was five times the 204  
7 EBITDA of \$2.2 million. And again, that five times multiple  
8 is before the \$2 million was added into the transaction.

9 Closing did occur in March of 2015. Bank records  
10 provided in the summary judgement evidence memorialized a  
11 wire of \$9.8 million from the debtor Constellation  
12 Healthcare Technologies to the IOLTA account at Robinson  
13 Brog, which was used to close the Porteck sale.

14 Of that \$9.8 million, \$6.8 million was wired on to  
15 Mr. Walia and \$3 million went sideways in the vernacular to  
16 another non-debtor entity controlled by Mr. Parmar called  
17 First United Health.

18 The Court notes this portion of the extensive  
19 factual background to the extent that it will ultimately  
20 relate to the Court's conclusions after trial as to whether  
21 or not there was an intentionally-fraudulent transfer in the  
22 second stage of the transaction because the trustee is not  
23 seeking to recover the \$6.8 million paid to Walia in the  
24 Porteck transaction.

25 Once the Porteck deal closed shortly thereafter in

1 June of 2015, Mr. Walia was installed as the chief executive  
2 officer of the Debtor's main operating company, Orion Health  
3 Corp., and became the chief technology officer of  
4 Constellation Healthcare Technologies. He continued to  
5 serve in those capacities through the fall of 2018.

6 While Mr. Walia was CEO of Orion and CTO of  
7 Constellation Health Technologies, being on or about April  
8 15 of 2016, the debtor, Constellation Health Technologies,  
9 transferred \$2.5 million from its JP Morgan account to  
10 Niknim. That's what I referred to earlier as the first  
11 transfer.

12 The dispute between the parties seems to center  
13 around a portion of the asset purchase agreement which  
14 concerns the alleged balance of the purchase price and the  
15 need for funds to be escrowed in accordance with Section 1.6  
16 of the APA. In his affidavit at Docket 64, Mr. Walia  
17 testifies that the stated purpose of the escrow arrangement  
18 was to protect the rights of Physicians Practice, the actual  
19 acquirer, as purchaser under the Porteck APA to receive \$2.5  
20 million to the extent such funds were required to indemnify  
21 Physicians Practice.

22 As a practical matter, the arrangement was not  
23 necessary to protect the buyer because it simply withheld  
24 payment of the \$2.5 million.

25 As far as what the parties' written agreement

1 calls for, however, Section 1.6 of the APA provides that for  
2 purposes of partially-securing the seller's obligations, the  
3 amount of \$2,500,000 shall be delivered by the buyers at  
4 closing to the escrow agent by wire transfer of immediately  
5 available funds pursuant to an escrow agreement  
6 substantially in the form attached as Exhibit A to the APA.  
7 Other conditions are stated in the APA concerning what the  
8 escrow agreement would look like.

9 Section 1.6 clearly required certain conditions of  
10 the escrow including that it be established and that it be  
11 funded upon occurrence of certain events. However, no  
12 escrow agreement was ever executed and no escrow account was  
13 ever established. See Joint Facts 46 through 49.

14 Despite Walia's assertion that the \$2.5 million  
15 was owed to him or his company, the books and records of the  
16 Debtor reflect no antecedent debt at the year ending  
17 December 2015. There is no antecedent debt reflected --  
18 there is no debt reflected on the books and records as being  
19 owed to Walia or Niknim. The Debtor's books and records  
20 reflect no debt being owed as a result of the Porteck  
21 transaction as of the end of 2015.

22 The Debtor's 2016 books and records did not  
23 evidence the satisfaction of any antecedent debt of \$2.5  
24 million or any increase in the net assets of the Debtors as  
25 a result of that \$2.5 million transfer.

1           The Trustee asserts that the \$2.5 million transfer  
2           was fraudulent based in part on an email that Mr. Parmar  
3           sent to Mr. Walia on the date of the transfer, stating, "I  
4           am willing to give you \$3.5 million in return for you to  
5           allow me to structure it properly internally, which requires  
6           I close the file with the \$2 million payment."

7           On the same day as that email, the Debtor  
8           transferred \$2.5 million from its M&T account, the M&T  
9           account of CHT to the JP Morgan account of Niknim. That  
10          transfer was sent at Mr. Walia's direction. The parties  
11          concede that that transfer occurred within two years prior  
12          to the petition date.

13          The second transfer at issue involves a 2017  
14          transaction and agreement under which Mr. Walia agreed to  
15          sell to Mr. Parmar or a designated entity a software company  
16          that Mr. Walia indirectly owned called AllRad Direct LLC,  
17          which at that time was a successful software company. Mr.  
18          Walia owned AllRad indirectly through his ownership of an  
19          entity, Object Tech Holding LLC.

20          The sale was memorialized by a membership interest  
21          purchase agreement, or MIPA, dated June 2017 between Object  
22          Tech as seller and Physicians Healthcare Network Management  
23          Solutions as buyer. That entity, Physicians Network  
24          Solutions, is not and was not one of the Debtors, but was  
25          again a third party entity owned or controlled by Mr.

1 Parmar.

2 The MIPA required a due diligence report and the  
3 negotiations required the diligence report to be prepared in  
4 connection with the sale, but that due diligence report was  
5 never completed. The MIPA required various schedules to be  
6 provided. Those schedules were never completed. The MIPA  
7 had multiple sections which were never completed, such as  
8 1.3, earnout payments; 1.4, discharge of debts and  
9 liabilities, maintenance of working capital. The MPIA also  
10 called for certain revenue projections, balance sheets or  
11 statements of assets and liabilities to be provided. Those  
12 were never provided. State and federal tax returns that  
13 were called for under the MIPA from the sellers were never  
14 provided. And the Debtor's board of directors never  
15 approved the purchase. See Joint Statements of Fact 60 to  
16 62, 66, 68, and 69.

17 Despite these deficiencies, the MIPA sale closed  
18 in June of 2017 and Debtor's funds, \$1,520,000, was wired  
19 out of the Robinson Brog IOLTA account to the Niknim bank  
20 account at JP Morgan Chase. Correspondingly, all of the  
21 shares of AllRad were transferred, but transferred to the  
22 non-debtor entity, Physicians Network Solutions. No assets  
23 were ever transferred in connection with the AllRad Object  
24 Tech transaction to any of the debtors.

25 At no point during 2017 did any of the debtors'

1 books and records evidence an antecedent debt of \$1,520,000  
2 or any other debt owed to either of the defendants in  
3 connection with Object Tech or AllRad. In fact, the  
4 debtors' books and records do not evidence the satisfaction  
5 of any antecedent debt or increase in net assets of the  
6 debtors through the acquisition of the interest in Object  
7 Tech or AllRad. The second transfer occurred within eight  
8 months prior to the petition date, so well within the two-  
9 year period.

10 With respect to the Court's legal determinations,  
11 again, I won't recite the standard for summary judgment.  
12 It's well-known by the parties. The Court has determined  
13 that there are certain material facts which are not disputed  
14 and other material facts as to which a genuine dispute does  
15 exist. I've set out under Rule 56(g) the facts which are  
16 undisputed for summary judgment purposes. And therefore for  
17 the remaining portions of the adversary proceeding are also  
18 undisputed for trial purposes.

19 I'm first going to turn to Sections 548(a) of the  
20 Bankruptcy Code for actual fraudulent transfer and New York  
21 DCL 273-A. Bankruptcy Code Section 548(a)(1)(B) allows a  
22 trustee to avoid any transfer of an interest that was made  
23 two years prior to the petition date if it was an actual  
24 fraudulent transfer. New York DCL Section 273(a) provides  
25 that every conveyance made without fair consideration when

1 the person making it is a defendant in an action for money  
2 damages or a judgement in such action has been docketed  
3 against him, it's fraudulent as to the plaintiff in that  
4 action without regard to the actual intent of the defendant if  
5 the debtor fails to satisfy the judgement. See Lyman  
6 Commerce v. Lung, 2015 U.S. District LEXIS 51447, \*17  
7 (S.D.N.Y. 2015).

8 Whereas here a judgment has already been docketed  
9 under New York DCL 273-A, there is no requirement that the  
10 transfer at issue have rendered the debtor insolvent. See  
11 Cadle Company v. Newhouse, 2002 U.S. Dist. LEXIS 15173  
12 (S.D.N.Y. Aug. 16, 2002).

13 Here, there was a final judgment entered in the  
14 Southern District of Texas in excess of \$200,000 in December  
15 of 2015. That judgement preceded both of the transfers at  
16 issue and remained outstanding at the time of the bankruptcy  
17 petitions. Proof of claim was filed on behalf of that  
18 judgement creditor. Thus that federal court judgment is  
19 sufficient as a matter of law to satisfy DCL 273-A as to any  
20 transfer which was made which lacked fair consideration.

21 Trustee has also alleged under New York DCL 273,  
22 274 and 275 that both transfers were not made in good faith  
23 or for fair consideration. Conveyance is vulnerable to  
24 attack by a creditor without regard to the actual intent of  
25 the transferor if the -- without -- if the transfer is

1 considered to have been in constructive fraud of creditors.  
2 See Laco X-Ray, 88 A.D.2d 425.

3 The transfer is constructively fraudulent if made  
4 without fair consideration of any if the following  
5 conditions are met. The transferor is insolvent or would be  
6 rendered insolvent by the transfer in question. There is no  
7 solvency analysis in this adversary proceeding. Transferor  
8 is engaged in or is about to engage in a transaction which  
9 has a reasonably small capital or the transferor believes it  
10 will incur debt beyond its ability to pay.

11 Even if there is fair consideration, a transfer is  
12 constructively fraudulent in the absence of good faith on  
13 the part of both the transferor and the transferee. CIT  
14 Group v. 160-09 Jamaica Avenue, 25 A.D.3d 301, 303.

15 This Court, as I've stated at the outset, has  
16 determined that genuine issues of material fact exist as to  
17 whether or not the first transfer can be avoided either as  
18 an actual intent fraudulent transfer or as a constructive  
19 fraudulent transfer.

20 Those issues include whether or not the first  
21 transfer was in fact a payment due in connection with the  
22 Porteck sale despite the noncompliance with the escrow  
23 provisions of a purchase agreement.

24 However, there are no genuine issues of material  
25 fact as to the second transfer at least as to the direct

1 payment to the defendant, Niknim. It's undisputed that the  
2 second transfer of funds that belonged to the debtor. Those  
3 funds were paid to a third-party corporation in connection  
4 with a transaction by which assets were conveyed to a non-  
5 debtor entity, being Physician Network Solutions, an entity  
6 controlled by Mr. Parmar.

7 Physicians Network was owed no antecedent debt.  
8 Niknim was owed no antecedent debt, and there is no  
9 consideration in that transaction for the debtors.

10 As far as the intentional fraudulent claim under  
11 548, Bankruptcy Code Section -- excuse me. That section  
12 allows the trustee to avoid any transfer made within two  
13 years before the petition date if made with actual intent to  
14 hinder, delay, or defraud any creditor to which the debtor  
15 was or became liable.

16 Similarly, under New York DCL 276, every  
17 conveyance made or obligation occurred with actual intent to  
18 hinder, delay, or defraud present or future creditors is  
19 voidable. As this Court had stated in (indiscernible)  
20 closeout the statutes are -- the statutes are analogous and  
21 can be analyzed together.

22 An actual fraudulent transfer can be made -- can  
23 be found, excuse me, where a debtor had an interest in the  
24 property transferred, which it did in both transfers. The  
25 transfer occurred within two years of the petition date.

1 Again, it did in both transfers. But the transfer was made  
2 with actual intent to hinder, delay, or defrauded a  
3 creditor. See In re Jacobs, 394 B.R. 646, 658-653 (Bankr.  
4 E.D.N.Y. 2008), which requires the trustee to establish  
5 actual intent of the transferor by clear and convincing  
6 evidence.

7 As typically in fraudulent and actual fraud  
8 settings, the courts typically look to various badges of  
9 fraud. I'll highlight those that the Court has considered  
10 here for trial purposes.

11 First is as far as lack or inadequacy of  
12 consideration. This Court has already noted in respect to  
13 the Porteck transaction that the agreed sale price of \$10.8  
14 million was juiced up by \$2 million at Mr. Parmar's request.  
15 Mr. Walia was aware of the inflation of the purchase price  
16 and essentially didn't care.

17 As I've already noted, the APA under the Asset  
18 Purchase Agreement for Porteck established various  
19 requirements for an escrow agreement and the funding of an  
20 escrow account, none of which occurred. Various disclosure  
21 documents, due diligence requirements were required in the  
22 purchase transaction. None were provided.

23 As far as the AllRad transaction is concerned, the  
24 Debtors gave up \$1.52 million and got nothing in exchange.

25 As far as close or family relationship, it's clear

1 that Mr. Parmar and Mr. Walia were both officers and  
2 insiders at the time of both transfers. They knew each  
3 other going back to at least 2015. They both served in the  
4 highest level of officer positions at the debtors Orion and  
5 CHT. Mr. Walia was clearly an insider of the debtors at the  
6 time of both the first and second transactions.

7 On financial condition, there's no solvency  
8 analysis here so the Court is not passing on solvency at the  
9 time of the transfer.

10 The Court has determined that genuine issues of  
11 material fact exist as to whether the first transfer, the  
12 \$2.5 million in Porteck, can be avoided as an intentionally  
13 fraudulent transfer either under the Bankruptcy Code or New  
14 York DCL.

15 Again, as to defendant Niknim in the second  
16 transfer, there are no genuine issues of material fact.  
17 There was no fair consideration in that transaction for the  
18 debtor estate for the \$1.52 million.

19 I want to turn just for a couple of minutes to the  
20 recovery theory of the trustee against the defendants Walia  
21 and Niknim. Not the liability theory. Liability theories  
22 are clear, but the recovery theory.

23 With respect to the \$1.52 million fraudulent  
24 transfer, the trustee seeks recovery both against Niknim,  
25 who received the money, and defendant Walia given his

1 control position at Niknim.

2 Under New York law, a creditor may recover money  
3 damages against parties who participated in a fraudulent  
4 transfer and are either transferees of the assets or  
5 beneficiaries of the conveyance. See *Tae H. Kim v. Jisung*  
6 *Yoo*, 311 F.Supp.3d 598, 613 (S.D.N.Y. 2008) and  
7 *Cadle Co. v. Newhouse*, 74 F. App'x 152, 153 (2d Cir. 2003).

8 The Court has determined that genuine issues of  
9 material fact exist as to whether Mr. Walia individually  
10 adequately participated in or adequately benefitted from the  
11 \$1.25 million payment that was made to Niknim. So summary  
12 judgment is not granted on that portion.

13 The trustee has also asserted that defendants  
14 Walia and Niknim were alter egos of each other and should be  
15 held jointly severally liable on an alter-ego veil piercing  
16 analysis. New York law is clear that alter ego liability  
17 exists when a parent or owner uses the corporate form to  
18 achieve fraud for when the corporation has been so dominated  
19 by an individual or another corporation, that separate  
20 identity has been so disregarded that -- excuse me, that its  
21 separate identity should be disregarded. See *City of Almaty*  
22 *v. Ablyazov*, 2019 U.S. Dist. LEXIS 55183, \*14 (Bankr.  
23 S.D.N.Y. 2019). Courts consider factors such as whether or  
24 not the owner of the corporation has abused the privilege of  
25 doing business in corporate form, whether there has been a

1 failure to adhere to corporate formalities, inadequate  
2 capitalization, comingling of assets, or use of corporate  
3 funds for personal use. See East Hampton Union Free School  
4 District v. Sandpebble Builders, 66 A.D.3d 122, 127.

5 The Court is not prepared to conclude that the  
6 trustee has met his burden of proof as a matter of law on  
7 alter ego liability of Mr. Walia in connection with the  
8 \$1.52 million transaction with Niknim.

9 That said, the Court has found for Rule 56(g)  
10 purposes certain alter ego facts to be undisputed and  
11 therefore found for purposes of trial. Those are Niknim was  
12 incorporated in 2015 and at all times had a single employee,  
13 officer, and shareholder, Mr. Walia. Niknim was formed to  
14 manage Walia's consulting work, his personal investments,  
15 and his family trust. Niknim was paid by the Debtor as a  
16 personal accommodation to Mr. Walia for tax purposes.

17 Walia was receiving money from Orion in 2017,  
18 which he would deposit at his convenience either into his  
19 personal checking account or an account of Niknim.

20 In 2016 and 2017, Walia would deposit monies from  
21 his other investments, his family trust and his wife's  
22 account into Niknim bank account. Walia used the Niknim  
23 account to pay personal expenses of his such as pool  
24 maintenance, purchasing suits, salon treatments, voice  
25 lessons, homeowner dues, and car payments. Niknim followed

1 and observed no corporate formalities and maintained no  
2 resolutions or shareholder minutes. Niknim was initially  
3 capitalized with one or two-thousand dollars. So even  
4 though the Court has not found as a matter of law alter ego,  
5 those facts are established for purposes of trial.

6 I'll turn briefly now to the defendant's partial  
7 summary judgement motion. As stated near the outset, it's  
8 essentially arguing that the trustee lacks creditor standing  
9 under Section 544 to invoke the New York DCL provisions.

10 The rights available through 541(b) of the  
11 Bankruptcy Code are limited to those of an existing  
12 unsecured creditor and are derivative of the rights of an  
13 actual unsecured creditor. See Lippe v. Bairnco Corp., 225  
14 B.R. 846, 852 (S.D.N.Y. 1998).

15 Creditors seeking recovery through Section 544(b)  
16 can only attack transfers to the extent a creditor with an  
17 allowable claim could do so under New York law. Here, it's  
18 clear and undisputed that the trustee has adequate standing  
19 to utilize Section 544(b) and thereby use the rights of  
20 creditors under New York DCL Law given the existence of  
21 unsatisfied judgements at the time of each of the two  
22 transfers.

23 In addition, the Trustee has noted in its summary  
24 judgment pleadings the existence of over \$100 million of  
25 unsecured claimants that existed at the time of each of the

1 transfers. So the request for summary judgment of the  
2 defendants is also denied.

3 I'm going to direct, Mr. Nolan, that you and Mr.  
4 Rosen and Mr. Scheiman work on a form of order. It simply  
5 needs to recite granting the relief and denying the relief  
6 as set out on the record today. It doesn't need to be a  
7 significant restating of the why reasons. The why reasons  
8 are all part of the record of an order granting the summary  
9 judgment relief that was granting and denying all remaining  
10 relief. As I stated, I am directing the parties to return  
11 to mediation. I know that you all went, didn't settle.  
12 Hopefully with the resolution, at least partial resolution  
13 of some of the issues today, the parties can engage in a  
14 more meaningful effort to resolve the claims for which  
15 liability has been determined and those that remain.

16 I'm also going to set a trial down to start July  
17 24th. I'll set my pretrial requirements. While that's only  
18 90 days from today but also several years from when the  
19 litigation started, I think you all generally know what  
20 you're going to bring to the trial. So there's not a lot of  
21 reinventing of wheels that need to be done. I expect I'll  
22 see the same declarations and probably not a whole lot more,  
23 but I'll get to observe witness testimony at least through  
24 cross-examination and make the necessary credibility  
25 assessments that I need to make to close the gap on the

1 issues that the Court was not prepared to make dispositive  
2 findings as a matter of law today.

3 All right? Anything else we need to address today  
4 then on this adversary proceeding?

5 UNIDENTIFIED SPEAKER: I guess just a couple  
6 points of clarification, Your Honor. Do we want to set a  
7 date -- the Court is setting a date by mediation in like the  
8 next 30 days?

9 THE COURT: Thank you. So the Court's  
10 anticipation was within 30 days from now you would go back  
11 to the mediator. I don't remember who you all used before.  
12 You can go back to him or her, you can start over with  
13 someone different. It seems to be more cost-effective and  
14 time-efficient to go back to who you all used before, but I  
15 will leave that to the parties.

16 I'm envisioning that as something that can be done  
17 in the next 30 days so that you essentially have -- it's  
18 three chunks of 30 days. You've got 30 days to try to  
19 settle it, 30 days to prepare for whatever else you need to  
20 submit for pretrial purposes, and then 30 days to prepare  
21 for the trial. Those are somewhat permeable deadlines, but  
22 I think that give you all time to focus on settlement before  
23 refocusing on the trial.

24 UNIDENTIFIED SPEAKER: Okay. And as far as trial,  
25 Your Honor, are you in Brooklyn now?

1 THE COURT: I am in Central Islip.

2 UNIDENTIFIED SPEAKER: Okay. So we have the  
3 opportunity to be present, or are we doing it by Zoom or...

4 THE COURT: Trial will be in-person under judicial  
5 conference protocol since we have exited the Zoom -- exited  
6 the COVID period. Because I anticipate I'm going to be  
7 taking live testimony, that would be taken live and in-  
8 person. So the witnesses will need to be here in my  
9 courtroom. I will use my ongoing protocol that I hold my  
10 trials in Central Islip and I hold my settlement conference  
11 in Brooklyn if that's of any help to you, although July on  
12 Long Island tends to be a very beautiful time of year I am  
13 told.

14 UNIDENTIFIED SPEAKER: You're told. All right.

15 THE COURT: Some of you may be on your way to or  
16 from other summer residences that you maintain, borrow, or  
17 lease out further east from the courthouse. So it's a  
18 beautiful time of year on Long Island and not so bad in  
19 Central Islip.

20 UNIDENTIFIED SPEAKER: It's a beautiful time to be  
21 there, Judge.

22 THE COURT: And I'll set aside adequate time to  
23 get the case tried. We're holding July 24th and July 25th,  
24 but I gave the 24th, part of that morning to the other  
25 adversary proceeding.

1 UNIDENTIFIED SPEAKER: Okay. Judge, I just want  
2 to say thank you to you and your chambers for the many, many  
3 accommodations in terms of the adjournments of the hearings  
4 on the motion. So thank you.

5 UNIDENTIFIED SPEAKER: I would like to add my  
6 thanks also, Your Honor. I appreciate it very much. And I  
7 have nothing further to add.

8 THE COURT: Well, I know you all prefer hearing  
9 yourselves argue than me rule, but I know we had teed this  
10 up for summary judgment arguments. But again, given the  
11 delays that have just happened in the adversary proceeding  
12 and my desire for it no longer to sit without resolution,  
13 you'll still have time to practice your well-honed skills in  
14 my courtroom examining witnesses as opposed to arguing to  
15 that little dot on your computers that constitutes a camera.  
16 So you'll have plenty of time to mix it up live out here  
17 unless you take it out of my hands and resolve it. All  
18 right?

19 UNIDENTIFIED SPEAKER: Well, we'll certainly try  
20 to, Your Honor.

21 THE COURT: All right. So then we'll be adjourned  
22 -- yes.

23 UNIDENTIFIED SPEAKER: Thank you very much.

24 THE COURT: Thank you all. (indiscernible) we'll  
25 go off the record. Thank you.

1 (Whereupon these proceedings were concluded)  
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## 1 I N D E X

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## RULINGS

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on First Transfer Denied

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Trustee's Motion for Summary Judgment

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on Second Transfer Granted

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Defendant's Motion for Summary

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Judgement Denied

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C E R T I F I C A T I O N

I, Rita Weltsch, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Rita Weltsch

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: April 25, 2024

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